No. 94-1191

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In the Supreme Court of the United States

OCTOBER TERM, 1994

WESTERN PALM BEACH COUNTY FARM BUREAU, INC., ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

DREW S. DAYS, III
Solicitor General

LOIS J. SCHIFFER
Assistant Attorney General

DAVID C. SHILTON
ELLEN J. DURKEE
Attorneys

Department of Justice
Washington, D.C. 20530
(202) 514-2217

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QUESTION PRESENTED

Whether the district court had jurisdiction under Article III of the Constitution over a suit by the United States against two state agencies seeking to compel the agencies to comply with their state law and contractual obligations concerning the delivery of water to federal properties.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-19a) is reported at 28 F.3d 1563. The opinion of the district court (Pet. App. 44a-74a) is reported at 847 F. Supp. 1567.

JURISDICTION

The judgment of the court of appeals was entered on August 23, 1994. A petition for rehearing was denied on October 11, 1994. Pet. App. 20a-22a. The petition for a writ of certiorari was filed on January 6, 1995. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The Everglades National Park is owned by the United States and operated by the National Park Service, an agency of the Department of the Interior. The Park provides sanctuary to rare and endangered species and has complex ecosystems that need low nutrient waters for their preservation. The Loxahatchee National Wildlife Refuge is managed by the U.S. Fish and Wildlife Service, also an agency of the Department of the Interior. The Refuge contains diverse marsh habitat and unique wildlife species. The Refuge also needs low nutrient waters to preserve its habitat. Large quantities of polluted waters have resulted in the destruction of life-forms essential to the preservation of the ecosystems in the Park and the Refuge. Pet. App. 6a.

On October 11, 1988, the United States brought this action against the South Florida Water Management District (SFWMD), the Florida Department of Environmental Regulation (DER), and various state officials. Count 1 of the second amended complaint alleged that SFWMD and DER had violated state law by (1) failing to regulate waters from the Everglades Agricultural Area containing harmful nutrients, (2) failing to prevent violations of water quality standards for water entering the Park and the Refuge, and (3) diverting polluted waters into the Refuge. Count 2 alleged that SFWMD had operated unpermitted structures, in violation of state statutory and common law. Count 3 alleged that SFWMD had breached its contract with the United States to deliver to the Park water meeting certain water quality standards. And Count 4 alleged that SFWMD had breached its lease with the United

States in which it was agreed that the Refuge would be used in a manner consistent with wildlife management. Pet. App. 6a-7a.

The complaint sought injunctive relief to compel the state defendants to regulate the quality of water flowing onto federal property to the extent mandated by state law. It also sought to compel performance of the contractual obligations alleged in Counts 3 and 4. Jurisdiction was invoked under 28 U.S.C. 1331 (federal question) and 28 U.S.C. 1345 (United States as a party). Pet. App. 7a.

Petitioners, who represent farming interests in the Everglades Agricultural Area, sought to intervene in the action. The district court denied intervention. On appeal, the Eleventh Circuit held that petitioners had a limited right to intervene on Count 1 because of the possibility that the district court might impose a numeric limit on water quality standards as a remedy, thereby depriving petitioners of their right under state law to have that issue resolved administratively. *United States* v. *South Florida Water Management District*, 922 F.2d 704, 707-710 (1991). This Court denied a petition for a writ of certiorari seeking review of that decision, in which petitioners raised the same jurisdictional issue they seek to raise in the present petition. 502 U.S. 953 (1991).

2. After years of litigation, the United States, DER, and SFWMD entered into a settlement agreement, which the district court then entered as a consent decree. Pet. App. 7a. The agreement establishes interim and long-term phosphorous concentration limits for the Park and the Refuge, as well as specific remedial programs designed to achieve those limits. *Id.* at 45a. The remedial programs

consist of storm water treatment areas to remove nutrients from agricultural runoff destined for the Park and the Refuge and a permit program to reduce the level of phosphorous in the agricultural runoff entering the storm water treatment areas. *Id.* at 45a-46a. The agreement substantially tracks the requirements of Fla. Stat. Ann. § 373.4592 (West Supp. 1995), an Act passed by the Florida legislature in response to this suit. Pet. App. 46a. The agreement is also subject to Florida's Administrative Procedure Act, which affords interested parties (including petitioners) an opportunity to challenge any proposed agency action. *Id.* at 47a. Thus, while the decree requires the state agencies to propose certain remedies, "[t]hey are not * * * required to adopt these measures as final action in the face of conflicting findings of fact or if persuaded that such action goes against the weight of the evidence established in [an administrative] hearing." *Id.* at 50a.

Petitioners opposed entry of the consent decree on the ground, *inter alia*, that the district court lacked jurisdiction over the case. The court rejected that contention, reasoning that it had jurisdiction over the United States' contract claims under 28 U.S.C. 1331 and jurisdiction over all claims under 28 U.S.C. 1345. Pet. App. 53a-55a.

3. The court of appeals affirmed the district court's entry of the consent decree. Pet. App. 1a-19a. The court held that the district court had jurisdiction of the case, reasoning that "[w]hen there is justiciability, the United States may, under section 1345, sue in the federal court irrespective of subject matter." *Id.* at 9a.

The court of appeals rejected petitioners' characterization of the United States' suit as "litigation to coerce the making of State regulations that a federal judge deems suitable under State law for United States' property interests." Pet. App. 10a. The court explained that "[t]he government's amended complaint did not seek, nor does the Consent Decree provide, that the government's role is to force the State to compose or enforce stricter State law regulations." *Ibid.* Instead, "[t]he essence of the Agreement is to achieve compliance with State law." *Ibid.*

The court also rejected petitioners' reliance on *New York* v. *United States*, 112 S. Ct. 2408 (1992), and *Pennhurst State Sch. & Hosp.* v. *Halderman*, 465 U.S. 89 (1984). Noting petitioners' concession that the Tenth Amendment is not a limitation on Article III jurisdiction and that the Eleventh Amendment is inapplicable in this case, the court concluded that those decisions were inapposite. Pet. App. 11a-12a.

Finally, the court of appeals rejected petitioners' contention that the United States had failed to satisfy the injury-in-fact requirement of Article III. Pet. App. 12a-13a. The court explained that "[h]ere it is alleged with specificity the direct and continuing injury and damage to the ecosystems of the Park and Refuge because of nutrient water flowing from the [Everglades Agricultural Area] which could have been, and should be, prevented by State agencies acting to enforce their own laws and regulations." *Id.* at 13a.

The court noted that during the pendency of the appeal, the Florida legislature had enacted the Everglades Forever Act, Fla. Stat. Ann. § 373.4592 (West Supp. 1995). Pet. App. 4a. That Act requires

the State to implement the storm treatment and permit programs called for by the consent decree without an administrative hearing devoted to those issues. Pet. 26. The court of appeals remanded the case to the district court for further consideration in light of that legislation.

ARGUMENT

1. Petitioners contend that the exercise of federal jurisdiction in this case exceeded the limits of Article III. According to petitioners, by exercising jurisdiction, the district court invaded "state sovereignty," in violation of "the Tenth Amendment, the Guarantee Clause, and the federalist structure of the Constitution." Pet. 20, 22-23 (footnote omitted). That contention is without merit and does not, in any event, warrant this Court's review.

a. Article III, Section 2, of the Constitution provides that "[t]he judicial Power shall extend * * * to Controversies to which the United States shall be a Party." In a long line of cases, this Court has held that this jurisdictional grant extends to cases brought by the United States against a State, and that no other provision in the Constitution prevents a federal court from exercising jurisdiction over such a suit. As this Court explained in *United States* v. *Mississippi*, 380 U.S. 128, 140 (1965), "nothing in [the Eleventh Amendment] or any other provision of the Constitution prevents or has ever been seriously supposed to prevent a State's being sued by the United States." See also *Welch* v. *Texas Dep't of Highways & Public Transp.*, 483 U.S. 468, 487 (1987) (opinion of Powell, J.); *West Virginia* v. *United States*, 479 U.S. 305, 311 (1987); *Nevada* v. *Hall*, 440

U.S. 410, 420 n.19 (1979); *United States* v. *Texas*, 143 U.S. 621 (1892).

The grant of jurisdiction in Article III is not limited to claims arising under federal law. The United States may assert state law as well as federal law claims under the jurisdiction conferred by Article III. *Cotton* v. *United States*, 52 U.S. (11 How.) 229, 231 (1850); see also *United States* v. *University of New Mexico*, 731 F.2d 703, 705 (10th Cir.), cert. denied, 469 U.S. 853 (1984); *United States* v. *California*, 655 F.2d 914, 918 (9th Cir. 1980).

Application of those well-established principles leads to the conclusion that the district court possessed Article III jurisdiction here. In this case, the United States alleged that SFWMD and DER violated their obligations under state law and under contracts with the United States to regulate the quality of water flowing onto federal lands. Pet. App. 6a-7a. The United States sought injunctive relief to compel the state agencies to regulate the quality of water flowing to those lands to the extent mandated by state law and by their contracts. *Id.* at 7a. Because the suit involves a "Controvers[y] to which the United States [is] a party," it falls squarely within the jurisdiction conferred by Article III.

Pennhurst State Sch. & Hosp. v. *Halderman*, 465 U.S. 89 (1984), relied upon by petitioners (Pet. 24), does not suggest otherwise. In that case, the Court held that a suit by a private party against a state official to enforce state law is barred by the Eleventh Amendment. 465 U.S. at 117. *Pennhurst* reaffirmed, however, that the Eleventh Amendment does not preclude the United States from suing a State in federal court. *Id.* at 103 n.12. And cases after *Pennhurst* have reiterated that principle. See

Blatchford v. *Native Village of Noatak*, 501 U.S. 775, 782 (1991) (States waived their immunity to a suit brought by the United States when they adopted the Constitution); *Pennsylvania* v. *Union Gas Co.*, 491 U.S. 1, 11 (1989) ("the Constitution presents no barriers to lawsuits brought by the United States against a State").

Petitioners' reliance (Pet. 25) on *New York* v. *United States*, 112 S. Ct. 2408 (1992), is similarly misplaced. In that case, the Court held that Congress lacks power under the Commerce Clause of the Constitution (Art. I, § 8, Cl. 3) to direct the States to regulate according to Congress's instructions. 112 S. Ct. at 2420-2422. As the court of appeals explained, however, "[t]he government's amended complaint did not seek, nor does the Consent Decree provide, that the government's role is to force the State to compose or enforce stricter State law regulations." Pet. App. 10a. Instead, "[t]he essence of the Agreement is to achieve compliance with State law." *Ibid.* *New York* is therefore inapposite.

b. Petitioners' principal contention is that the district court lacked Article III jurisdiction because, in their view, state law does not furnish a cause of action to the United States to enforce state environmental laws. Pet. 21, 23. A court's jurisdiction, however, does not depend in any way on whether the plaintiff has a valid cause of action. See *Bell* v. *Hood*, 327 U.S. 678, 682 (1946) ("the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction").

In any event, the question whether state law affords the United States a cause of action to enforce state environmental laws does not warrant this

Court's review. The district court held that state law does afford the United States such a cause of action, and petitioners have failed to demonstrate any error in that ruling. See Fla. Stat. Ann. § 403.412(2)(a) (West 1993); *Florida Wildlife Federation* v. *State Dep't of Environmental Regulation*, 390 So. 2d 64 (Fla. 1980) (suit to compel SFWMD to cease pollution); *Friends of Everglades, Inc.* v. *Board of County Comm'rs*, 456 So. 2d 904 (Dist. Ct. App. 1984) (Florida statute authorizes suit for injunctive relief against government agency to compel it to enforce laws relating to protection of natural resources), review denied, 462 So. 2d 1108 (Fla. 1985). Moreover, the resolution of that issue depends entirely upon an interpretation of state law; it therefore does not present an issue of general importance. Finally, in this case, the United States alleged not only that the State had violated its environmental laws, but also that the State had failed to comply with its contracts with the United States. Those contract claims provided an independent basis for the relief sought by the United States.

c. Even if the state sovereignty claims raised by petitioners were substantial, this case would not present a suitable vehicle for addressing them. After years of contentious litigation, the State chose to settle this litigation. Pet. App. 7a. The state legislature, moreover, has enacted into law the key elements of the settlement. Pet. 26. The decree entered by the district court therefore poses no threat to principles of state sovereignty. By seeking to overturn a decree that the State willingly entered into and that the state legislature has since enacted, accepted, and adopted as law, petitioners ones are the

who are attempting to interfere with state sovereignty.

2. Petitioners alternatively contend (Pet. 27-28) that the United States lacked standing to bring this case. That contention is without merit. To satisfy the standing requirement of Article III, a plaintiff must allege an injury in fact that is fairly traceable to the defendant's allegedly wrongful conduct. *Allen* v. *Wright*, 468 U.S. 737, 751 (1984). The United States satisfied that requirement. In particular, the United States alleged that the failure by state agencies to observe state environmental laws and their own contractual undertakings had caused "direct and continuing injury and damage to the ecosystems of the Park and Refuge." Pet. App. 13a. As the court of appeals concluded (*ibid.*), those allegations of injury to the United States' property interests were sufficient to satisfy the injury-in-fact requirement of Article III.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

DREW S. DAYS, III
Solicitor General

LOIS J. SCHIFFER
Assistant Attorney General

DAVID C. SHILTON
ELLEN J. DURKEE
Attorneys

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